IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.4415 OF 2003

Smt.Bibi Begum Mard Shafiq Ahmed Khatimiti & ors. .. .. Petitioners (Orig. Applicants)

V/s.

Mohamed Khalid Gulam Dastgir Jalal & ors. .. .. Respondents (Nos.1 to 8 - Original Plaintiffs, Nos.9 & 10 - original Defendant Nos.1 & 3)

Ms.Gauri Godse for petitioners (original applicants).

Mr.G.S. Godbole with Mr.Ashok Tajane for respondent Nos.1 to 3, 5 & 7.

CORAM : H.L. GOKHALE, J.

DATED : 8th January 2007

ORAL JUDGMENT :

1. Heard the learned Counsel for the parties.

2. This Writ Petition under Article 227 of the Constitution of India seeks to challenge the order dated 10th March 2003 passed by the Civil Judge, Junior Division, Kalyan, below the Application (Exhibit 65) filed by the petitioners (original applicants) herein to implead them as defendants in Regular Civil Suit No.283 of 1986. That Application has been rejected.

3. The Suit has been filed by respondent Nos.1 to 8 to evict respondent No.9 from the suit premises. Respondent No.9 is stated to be a tenant of the suit premises and respondent No.10 is stated to be a sub-tenant. The Suit is filed under the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short "the Bombay Rent Act"). The Suit is filed on the ground of arrears of rent, non-user of the property and carrying out permanent construction in the suit premises without the permission of the landlord.

4. The petitioners (original applicants) contend that the property was owned initially by one Siddique. His son was one Baba. The name of Baba’s son was Mohmd. Saeed. The name of wife of Mohmd. Saeed was Bisa Bibi. This Mohmd. Saeed had two children from this marriage viz. son - Imam and daughter - Bibi Begam. The wife of this Imam was Zoharabai. The plaintiffs are claiming the ownership of the property as the purchasers of the property from Zoharbai, whereas the applicants are claiming to be the legal heirs and representatives of one Shafiq, who was the nephew of this Bisa Bibi.

5. The argument on behalf of the applicants

is two-fold. Firstly, it is submitted that earlier this Shafiq was brought on record, though his name came to be deleted and since the applicants are heirs and legal representatives of this Shafiq, they are entitled to come on record. Shafiq died in September 2001 but the applicants who were defending that Application ought to have filed a counter contending that Shafiq was rightly joined in the proceedings. The second submission is on the basis of title that they are the owners of the property, they have a stake therein and they should be allowed to be impleaded.

6. As far as the first submission is concerned, Mr.Godbole appearing for respondent Nos.1 to 3 and 5 & 7, pointed out that there are number of proceedings between the parties and the above-referred Shafiq is a party to some of those proceedings and has joined in some of those proceedings on his own. The submission of Mr.Godbole is that while carrying out the amendment in the present proceedings, by mistake, it appears that the name of this Shafiq came to be added. He pointed out that in fact the plaintiffs had moved an Application to join one Hissamuddin Saudaghar as defendant No.2 in that Suit since according to the original plaintiffs he was

inducted as the sub-tenant and the decree was required to be passed against him. It was their case that while carrying out that amendment this Shafiq came to be added erroneously and, therefore, they moved a specific Application (Exhibit-56) on 22nd January 2002 pointing out that this Shafiq had not made any Application to join in these proceedings. In paragraph 2 of this Application it was specifically averred that there have been a number of proceedings between the parties and this Shafiq has been joined in other proceedings by making another Application. It is fairly stated that the plaintiffs formed an impression that in the present proceeding also this Shafiq was to be joined. It is clearly stated that this was mis-understanding on the part of the plaintiffs and, therefore, this Application was moved to delete his name and to remove the relevant Exhibits bearing Nos.50, 51, 52, 53 and 55 from the record.

7. It is pertinent to note that this Application was moved on 22nd January 2002 and came to be decided on 5th July 2002. No counter was filed to this Application. This is a very relevant factor inasmuch as a specific averment was made in the Application dated 22nd January

2002 that out of a mis-understanding Shafiq had been brought on record. This Application came to be allowed by the learned Judge by his order passed on 5th July 2002. The learned Judge recorded in his order that his predecessor passed an order inadvertently on the Application moved by the deceased - defendant No.1. The procedural lacuna having been brought to the notice of the learned Judge, he allowed this Application dated 22nd January 2002. The learned Judge however granted liberty to the applicants herein who claim to be the legal heirs of deceased - defendant No.2 i.e. Shafiq to seek permission from this Court in this regard.

8. Accordingly, the applicants moved an Application that they be joined as parties to the proceedings. That Application was moved on the very date i.e. on 5th July 2002 and came to be rejected by the impugned order passed on 10th March 2003.

9. Mr.Godbole appearing for respondent Nos.1 to 3 and 5 & 7 submitted that the order of 5th July 2002 had obtained finality and, therefore, this subsequent Application could not be entertained. This submission cannot be accepted

for the simple reason that the learned Judge had granted liberty to the applicants to move their Application. The Application, which was moved by the applicants on 5th July 2002 (Exh.65) cannot, therefore, be held to be non-entertainable on this ground. The learned Judge, therefore, dealt with this submission of the applicants that Shafiq was already a party to the Suit. In para-3 of his order he recorded that he had gone through the record of the proceedings and it did not appear to him that Shafiq Ahmed Khatimiti was party to the Suit. He categorically stated that it appears that he was never impleaded to the Suit. In fact he also stated that no order to the effect of impleading him to the Suit was ever passed by that Court. That being the position, as far as the first submission, namely, that Shafiq was a party and, therefore, the applicants should be impleaded as his legal representatives is concerned, in my view, the said submission is untenable.

10. The second submission which is the main submission of Ms.Godse is that the applicants are claiming to be the owners of this property through Bisa Bibi and, therefore, they ought to be joined in the proceedings.

11. Ms.Godse appearing for the petitioners has relied upon two judgments of the Apex Court, firstly, in the case of **Savitri Devi vs. District Judge, Gorakhpur & ors. reported in (1999) 2 SCC 577**. In para-9 of the judgment, the Apex Court has laid down that Order 1 Rule 10 of C.P.C. enables the Court to add any person as a party at any stage of the proceedings if the person's presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the Suit. The Court has observed that avoidance of a multiplicity of proceedings is one of the objects of the said provision in the Code. There cannot be any grievance with the proposition. Undoubtedly, multiplicity is to be avoided but the Court has to form an opinion that the presence of the person concerned is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. It is, therefore, necessary to see as to what are the questions arising in the Suit. If the presence of the person is germane for the determination of those issues, certainly he will have to be added but not otherwise. That will, therefore, depend upon what are the questions involved in the Suit and whether

the presence of the person concerned is necessary for effectively and completely adjudicating upon those issues.

12. The second judgment relied upon by Ms.Godse, which is more relevant, is in the case of **Babulal Bhuramal & ors. vs. Nandram Shivram & ors. reported in AIR 1958 SC 677**. This was a case where a Suit was filed for eviction of a tenant and two persons claiming them to be trespassers. The Court of Small Causes held that the persons concerned were not lawful sub-tenants and the subletting to them was contrary to the law and, therefore, denied them the protection of the Act. It, therefore, passed a decree of eviction. An Appeal against the same to a Division Bench of that Court and the revision to the High Court failed. Thereafter these persons, who were claiming to be trespassers, filed a Suit in the City Civil Court at Bombay. There, they claimed that the 1st plaintiff therein was a tenant and the second and the third plaintiffs therein were lawful sub-tenants. The City Civil Court held that it had the jurisdiction to entertain the Suit but dismissed it on the ground that there had been no lawful subletting. The Suit was, therefore, dismissed. An Appeal was carried to the High

Court. The High Court disagreed with the view of the Judge of the City Civil Court that the City Civil Court had the jurisdiction and dismissed the Appeal. The matter was carried to the Supreme Court. What is held by the Apex Court in para-9 is relevant for our purpose. In para-9 of the judgment, the Apex Court has discussed the inter-relationship between Section 28 and Section 29-A of the Bombay Rent Act. The Court noted that Section 28 or Section 29-A shall be deemed to bar a party to a suit from suing in a competent Court to establish his title to such premises. The Court however, observed that the conflict between Section 28 and Section 29-A should be avoided by a proper construction and then the Court observed that it is possible to conceive of cases where in a Suit under Section 28, a question of title to the premises which does not arise out of the Act or any of its provisions may be determined incidentally and any party aggrieved by that, would be free to sue in a competent Court to establish his title under Section 29-A. The Court thereafter observed that a title, which could not be established outside the Court but which arose under the provisions of the Act by virtue of a claim made thereunder, must be determined by a Court specified in Section 28 and a title de hors

the Act may be determined in any other Court of competent jurisdiction.

13. Mr.Godbole appearing for the contesting respondents has drawn our attention to the definition of landlord under Section 5(3) of the Bombay Rent Act to point out that it is a wide definition and it covers even rent collector. The Suit is filed by respondent Nos.1 to 8 to evict the concerned occupants on three specific grounds available under the Bombay Rent Act. He submitted that these persons have specifically challenged the title of the plaintiffs as landlords. Now, when they have raised such a question, that would certainly be decided as a question incidental to the determination of the issues raised in the Suit. The Apex Court observed in para-9 in Babulal Bhuramal (supra) that as per Section 29-A, the legislature clearly intended that no finality should be attached to the decision of a Court trying a Suit under Section 28 on a question of title de hors the Act. His submission is that if the present applicants claim to be landlords, nothing prevents them from filing their Suit to establish their title. As far as the present Suit for eviction of the persons is concerned, in his submission, they are not necessary party to the

present proceedings.

14. Ms.Godse, on the other hand, submitted that certain questions with respect to the title as raised by the concerned defendants arise in the Suit. The persons, who claim to be the landlords, should certainly be permitted to be added into the proceedings and, therefore, the order of the learned Judge is erroneous.

15. To examine the rival submissions, it will be better to refer to the two relevant sections viz. Sections 28(1) and 29A. They read as follows:-

> " **28. Jurisdiction of courts**
>
> (1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction, -
>
> (a) in Greater Bombay, the Court of Small Causes, Bombay,
>
> (aa) in any area for which, a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887,

such Court and

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge the Court of the Civil Judge (Senior Division) having ordinary jurisdiction,

shall have jurisdiction to entertain and try suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply or between a licensor and a licensee relating to the recovery of the licence fee or charge and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceedings, or application or to deal with such claim or question."

"**29A. Saving of suit involving title.**

> Nothing contained in section 28 or 29 shall be deemed to bar a party to a suit, proceeding or appeal mentioned therein in which a question of title to premises arises and is determined, from suing in a competent court to establish his title to such premises."

16. I have noted the submissions of both the Counsel. In my view, the inter-relationship between Section 28 and Section 29-A of the Bombay Rent Act has been clearly explained by the Apex Court in para-9 of its judgment in **Babulal's case (supra)**. As per that judgment, an incidental query to the title can be examined by a Court under Section 28 of the Act but it has no finality and that is not the forum for deciding the inter se disputes on title. Para-9 of that judgment reads as follows:-

> " It is possible to conceive of cases where in a suit under Section 28 a question of title to premises which does not arise out of the Act or any of its provisions may be determined incidentally. Any party to the suit aggrieved by such a

determination would be free to sue in a competent court to establish his title to such premises by virtue of the provisions of Section 29A. On the other hand, in a suit where a question of title entirely arises out of the Act or any of its provisions, the jurisdiction to try such a suit was exclusively vested in the courts specified in Section 28 and no other. That is to say, a title which could not be established outside the Act but which arose under the provisions of the Act by virtue of a claim made thereunder must be determined by a court specified in Section 28 and a title de hors the Act may be determined in any other court of competent jurisdiction. The Act purported to amend and consolidate the law relating to the control of rents of certain premises and of evictions. It defined "landlord" and "tenant" to have a meaning wider in scope and concept than those words have under the ordinary law. Any one who was a landlord or a tenant, as defined in the Act, would have to conform to the provisions of the Act and all claims to such a status would have to be determined

> under the provisions of the Act as they would be claims arising out of it. The Act specially provided that the courts specified in Section 28 shall have the jurisdiction to deal with any claim or question arising out of the Act or any of its provisions and expressly excluded any other court from having such jurisdiction."

17. We are concerned with a Suit where four grounds of eviction have been set up by the plaintiffs. The plaintiffs are claiming that the defendants are trespassers of the property. The defendants have squarely raised amongst others a dispute that the plaintiffs are not the landlords. It is for them to agitate it. For the other persons who claim to be the landlords of the property, their forum is to go to the Civil Court and establish their title. That is not an issue which is incidental to the determination and necessary in the Suit which is being tried under Section 28 of the Bombay Rent Act. The jurisdiction of the Rent Court under Section 28 is a limited jurisdiction circumscribed by the provisions of the Act. It cannot be expanded beyond that. A determination of the title to the

property at the instance of a person who claims to be an owner of the property is outside the jurisdiction of the Rent Act.

18. For the reasons stated above, in my view, there is no error in the order dated 10th March 2003 passed by the learned Civil Judge, Junior Division, Kalyan, rejecting the Application (Exhibit 65) moved by the applicants herein. The Petition is, therefore, rejected. The stay granted will stand vacated. The record and proceedings brought from the Trial Court be sent down forthwith.

19. On the request of Ms.Godse, learned Counsel appearing for the petitioners (original applicants), it is made clear by way of abundant caution that in the event the petitioners file a Suit on the title, it will be for the concerned Civil Court to decide the question arising therein. No opinion has been expressed in the present order one way or the other on this question and it will be for that Court to decide the question on the merits of the submissions of both the parties. It is further made clear that in the event the submission made by the contesting respondents in the present Suit, namely, that the

plaintiffs are not the landlords is rejected, it will be a determination between the present plaintiffs and the contesting respondents and it will not bind the present applicants.

20. Accordingly, the Petition is rejected. There shall be no order as to costs.

(H.L. GOKHALE, J.)